

# HOUSE BILL No. 1044

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-17-16; IC 27-1-45; IC 34-13-3-2.

**Synopsis:** Veterans' recovery program. Establishes, for five years, the veterans' recovery program and fund to provide treatment for veterans with traumatic brain injury or posttraumatic stress disorder and to obtain reimbursement from third parties. Requires the commissioner of insurance to establish program standards. Allows the commissioner to appoint an advisory board for the program. Requires annual reporting.

**Effective:** July 1, 2016.

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**Zent**

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January 5, 2016, read first time and referred to Committee on Public Health.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1044

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 10-17-16 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]:

4 **Chapter 16. Veterans' Recovery Program**

5 **Sec. 1. As used in this chapter, "program" refers to the**  
6 **veterans' recovery program established under IC 27-1-45.**

7 **Sec. 2. The director of veterans' affairs and the adjutant general**  
8 **of the Indiana National Guard shall enter into a memorandum of**  
9 **understanding with any institutional review board as necessary to**  
10 **provide assistance to veterans under the program.**

11 **Sec. 3. The director of veterans' affairs shall give notice of the**  
12 **existence of the program to each individual in Indiana who has a**  
13 **traumatic brain injury or posttraumatic stress disorder related to**  
14 **the individual's service, as follows:**

15 (1) As a member of the United States armed forces.

16 (2) As a commissioned officer of the:

17 (A) United States Public Health Service;



(B) Environmental Science Services Administration;  
 (C) National Oceanic and Atmospheric Administration; or  
 (D) United States Coast and Geodetic Survey;  
 who actively served and was discharged or released from  
 service under conditions other than dishonorable.

(3) As a member of the:

(A) reserve component of the United States armed forces;  
 or

(B) Indiana National Guard;  
 who was not required to actively serve and is eligible for or  
 has received retirement under 10 U.S.C. 12731 et seq.

**Sec. 4. This chapter expires November 1, 2021.**

SECTION 2. IC 27-1-45 IS ADDED TO THE INDIANA CODE AS  
 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 2016]:

**Chapter 45. Veterans' Recovery Program and Fund**

**Sec. 1. As used in this chapter, "active service" has the meaning  
 determined under 38 U.S.C. 101 et seq.**

**Sec. 2. As used in this chapter, "facility" means:**

- (1) a hospital;
- (2) a public health clinic;
- (3) an outpatient health clinic;
- (4) a community health center; or
- (5) another entity;

that is authorized by the department under this chapter to provide  
 hyperbaric oxygen treatment.

**Sec. 3. As used in this chapter, "fund" refers to the veterans'  
 recovery fund established by section 14 of this chapter.**

**Sec. 4. As used in this chapter, "health care provider" means an  
 individual who:**

- (1) is licensed in Indiana to provide health care services (as  
 defined in IC 27-8-11-1); and
- (2) has prescriptive authority;

under IC 25.

**Sec. 5. As used in this chapter, "hyperbaric oxygen treatment"  
 means treatment for traumatic brain injury or posttraumatic  
 stress disorder that is ordered by a health care provider and  
 delivered in:**

- (1) a hyperbaric chamber approved by the federal Food and  
 Drug Administration; or
- (2) a hyperbaric oxygen device that is approved by the federal  
 Food and Drug Administration for investigational use under



direction of an institutional review board with a national clinical trial number.

Sec. 6. As used in this chapter, "institutional review board" means a committee that has been formally designated to approve, monitor, and review biomedical and behavioral research involving humans and is regulated under 45 CFR 46.

Sec. 7. As used in this chapter, "program" refers to the veterans' recovery program established under this chapter.

Sec. 8. As used in this chapter, "traumatic brain injury" means an acquired injury to the brain. The term does not include brain dysfunction caused by birth trauma or by a congenital or degenerative disorder.

Sec. 9. As used in this chapter, "veteran" means an individual who:

- (1) is a resident of Indiana;
- (2) was a:
  - (A) member of the United States armed forces;
  - (B) commissioned officer of the:
    - (i) United States Public Health Service;
    - (ii) Environmental Science Services Administration;
    - (iii) National Oceanic and Atmospheric Administration;
  - or
  - (iv) United States Coast and Geodetic Survey;
 who was in active service and was discharged or released from service under conditions other than dishonorable; or
- (C) member of the:
  - (i) reserve component of the United States armed forces;
  - or
  - (ii) Indiana National Guard;
 of whom active service was not required and who is eligible for or has received retirement under 10 U.S.C. 12731 et seq.; and
- (3) has traumatic brain injury or posttraumatic stress disorder that is related to the individual's service described in subdivision (2).

Sec. 10. (a) The department shall establish and administer a veterans' recovery program to provide diagnostic testing and hyperbaric oxygen treatment to veterans.

(b) Hyperbaric oxygen treatment provided through the program must be provided:

- (1) under a protocol supervised by an institutional review board; and



(2) in compliance with the standards of the International Hyperbaric Medical Foundation.

(c) The department shall adopt rules under IC 4-22-2 to implement this chapter, including standards for the following:

(1) Determination by the department that an individual is a veteran eligible for participation in the program, with priority for participation given to a veteran who participates in a treatment plan established by a veterans treatment court in Indiana.

(2) Determination by the department that a facility is eligible to participate in the program, including:

(A) a requirement that the facility must maintain compliance with applicable fire codes, treatment protocols, and department oversight; and

(B) other facility standards determined by the department.

(3) Treatment plan requirements, including the following:

(A) A facility's submission to the department, before providing hyperbaric oxygen treatment to a veteran, of a treatment plan including:

(i) a health care provider's prescription for hyperbaric oxygen treatment;

(ii) verification by the department that the veteran is eligible for participation in the program and voluntarily accepts the treatment through the program;

(iii) an estimate of the cost of the treatment; and

(iv) any other information required by the department.

(B) A reasonable time frame for:

(i) approval or disapproval by the department of a treatment plan described in clause (A); and

(ii) notice to the facility of approval or disapproval of the treatment plan.

(C) Contingent on sufficient funding available in the fund, approval of each treatment plan that meets the requirements established by the department under this chapter.

(D) Reservation in the fund of an amount equal to the estimated treatment cost for each veteran whose treatment plan is approved under this chapter.

(4) Criteria for approval of payment for treatment that has been verified by the department to have been provided under a treatment plan approved under subdivision (3), including:

(A) whether a drug or device used in the treatment plan



has been approved for any purpose by the federal Food and Drug Administration;

(B) health improvement of the veteran receiving the treatment, as demonstrated through:

- (i) standardized, independent pretreatment and posttreatment neuropsychological testing;
- (ii) nationally accepted survey instruments;
- (iii) neurological imaging; or
- (iv) clinical examination; and

(C) receipt by the department of pretreatment and posttreatment evaluation documentation.

(5) Payment from the fund for treatments approved for payment under subdivision (4) not more than thirty (30) days after the veteran, or health care provider on behalf of the veteran, submits documentation required by the program.

(6) Confidentiality of all individually identifiable patient information of a veteran. However, all data and information from which the identity of an individual veteran cannot be reasonably ascertained must be available to the general assembly, participating third party payers, participating institutional review boards, participating health care providers, and other governmental agencies.

(7) A treatment for which approval is granted under subdivision (1) is considered to have been medically necessary for purposes of any third party payment.

(d) The commissioner may appoint an advisory board to assist the department in development of the program.

**Sec. 11. The commissioner shall do the following:**

(1) Be responsible for the management of all aspects of the program.

(2) Hire any necessary staff and enter into any necessary agreements with third parties to implement and evaluate the program.

(3) Prepare and provide program information.

(4) Use money in the fund to pay for diagnostic testing and hyperbaric oxygen treatment for veterans with traumatic brain injury or posttraumatic stress disorder when other funding is unavailable, according to the program guidelines.

(5) With the assistance of the attorney general, pursue reimbursement from:

- (A) the federal government; and
- (B) any other responsible third party payer;



for payments made under subdivision (4), for deposit in the fund.

(6) Act as a liaison to the federal government and other parties regarding the program.

(7) Enter into memoranda of understanding, as necessary, with other state agencies concerning the administration and management of the fund and the program.

Sec. 12. (a) A health care provider or facility providing treatment, including a physician who supervises treatment, under the program shall bill the program and be paid at:

(1) the Medicare rate for the treatment;

(2) a negotiated rate that is less than the Medicare rate for the treatment; or

(3) if a rate under subdivision (1) or (2) does not apply, the fair market rate for the treatment, as approved by the commissioner.

(b) The commissioner, through the office of Medicaid policy and planning, shall seek any waiver or approval required by the federal Centers for Medicare and Medicaid Services to obtain Medicaid payment for diagnostic testing and hyperbaric oxygen treatment under the program.

Sec. 13. (a) If a facility or health care provider or veteran fails to request payment from the program within six (6) months after the date on which treatment is concluded, the department shall send written notice to the facility or health care provider and the veteran that unless the facility, health care provider, or veteran, within ninety (90) days after the date on which the notice from the department is sent:

(1) notifies the department that treatment has not concluded and the veteran is receiving continued treatment under the program; or

(2) requests payment from the program for the incurred treatment;

the funding reserved for the treatment will be terminated on the ninetieth day after the date on which the notice from the department was sent.

(b) If a facility, health care provider, or veteran to which notice is sent under subsection (a) does not notify the department as required by subsection (a), the commissioner shall terminate the reservation of funds made for the veteran's treatment plan under section 10(c) of this chapter.

Sec. 14. (a) The veterans' recovery fund is established.



1 (b) The purpose of the fund is to:

- 2 (1) be used as a revolving fund to provide payments under the  
3 program for diagnostic testing and hyperbaric oxygen  
4 treatment of veterans with posttraumatic stress disorder or  
5 traumatic brain injury; and  
6 (2) fund the administrative expenses of the program.

7 (c) The commissioner shall:

- 8 (1) administer the fund; and  
9 (2) in cooperation with other state agencies, seek federal and  
10 state government grants, including funding from the  
11 following:

12 (A) The United States Department of Health and Human  
13 Services, Substance Abuse and Mental Health  
14 Administration, Gains Center for Behavioral Health and  
15 Justice Transformation.

16 (B) The United States Department of Justice, Office of  
17 Justice Programs, Bureau of Justice Assistance.

18 (C) The United States Department of Defense.

19 (D) The United States Department of Veterans Affairs.

20 (d) Expenses of administering the fund shall be paid from  
21 money in the fund.

22 (e) The fund consists of the following:

- 23 (1) Grants and gifts intended for deposit in the fund.  
24 (2) Interest, premiums, gains, or other earnings on the fund.  
25 (3) Any reimbursement received from the federal government  
26 or third parties.  
27 (4) Appropriations made by the general assembly.

28 (f) The treasurer of state shall invest the money in the fund not  
29 currently needed to meet the obligations of the fund in the same  
30 manner as other public money may be invested. Interest that  
31 accrues from these investments shall be deposited in the fund.

32 (g) Money in the fund at the end of a state fiscal year does not  
33 revert to the state general fund.

34 (h) All expenditures from the fund must be made by the  
35 treasurer of state following approval by the budget agency.

36 (i) Upon expiration of this chapter, any money remaining in the  
37 fund and not obligated for a previously approved treatment plan  
38 shall be transferred as follows:

- 39 (1) Any money remaining in the fund that does not exceed the  
40 total of any amounts appropriated by the general assembly  
41 shall be transferred to the general fund.  
42 (2) Unless otherwise prohibited by law, any money remaining





in the fund after the transfer required by subdivision (1) shall be transferred to the military family relief fund established by IC 10-17-12-8.

**Sec. 15. (a)** An individual who receives treatment under the program may not be subject to retaliation of any kind.

**(b)** Except as provided in this chapter, the program and the fund are not subject to any budget review or approval process otherwise required under state law. However, the commissioner shall file an annual audited financial statement in an electronic format under IC 5-14-6 with the legislative council and the budget agency.

**Sec. 16.** The commissioner shall, not later than August 1 of each year, file a report concerning the program in an electronic format with the governor and, under IC 5-14-6, with the legislative council. The report shall include all of the following:

**(1)** The number of individuals for whom payments were made from the fund for treatment under the program.

**(2)** The condition for which each individual counted under subdivision (1) received treatment and the success rate of each treatment.

**(3)** Treatment methods for which payment was made under the program and the success rate of each method.

**(4)** Recommendations concerning integration of the treatment methods described in subdivision (3) with treatments provided in facilities of the United States Department of Defense and the United States Department of Veterans Affairs.

**Sec. 17.** This chapter expires November 1, 2021.

SECTION 3. IC 34-13-3-2, AS AMENDED BY P.L.145-2011, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. This chapter applies to a claim or suit in tort against any of the following:

**(1)** A member of the bureau of motor vehicles commission established under IC 9-15-1-1.

**(2)** An employee of the bureau of motor vehicles commission who is employed at a license branch under IC 9-16, except for an employee employed at a license branch operated under a contract with the commission under IC 9-16.

**(3)** A member of the driver education advisory board established by IC 9-27-6-5.

**(4)** A health care provider, with respect to any damages resulting from the health care provider's use of hyperbaric



1 oxygen treatment to treat a veteran under the Indiana  
2 veterans' recovery program under IC 27-1-45.

